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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

No. 73-1279

THE WILLIAMS & WILKINS COMPANY,
Plaintiff-Petitioner,

v.

THE UNITED STATES,
Defendant-Respondent.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF AMICUS CURIAE BY THE INFORMATION INDUSTRY ASSOCIATION

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This brief is submitted by the Information Industry Association with Petitioner's and Respondent's consent.

I.

NATURE AND INTEREST OF THE AMICUS CURIAE

The Information Industry Association (the "Association") is a membership association with approximately 65 members. These run the gamut from large and

small information companies to large and small manufacturers of technical equipment including computers and photocopiers. The members of the Association disseminate information accounting for billions of dollars' worth of sales a year. A great part consists of information material which has been selected, collated, editorialized and published at substantial expense and at great investment. The decision below could impair in large measure the assets and businesses of members of this Association.

II.

THE RULING OF THE COURT BELOW

The ruling of the Court below has applied a principle of fair use, applicable to laborious hand copying, to the modern technology which permits rapid, massive and multiple copying by machine. In effect, the ruling of the Court below permits the copying in massive quantities by modern technology without payment of a royalty. It is respectfully submitted that such permission cannot help but endanger the revenue base which is an absolute necessity so that the production and dissemination of highly selective information can be economically sustained. It further will disrupt and be destructive of the economic relationships on which this nation's distinctive competitive marketplace of ideas depends.

III.

THE ISSUES

The interest of this amicus in the resolution of this case is twofold. Not only are its members concerned with the precedent of this case in the light of the narrow factual ground presented, but the information industry is concerned with the effect of this case as a precedent with a broad sweeping principle.

This amicus submits that the Supreme Court should grant certiorari so that there may be some resolution of the issues which have arisen in recent years by reason of the rapid increase in technology in conjunction with the explosion in information and communications. Machine photocopying is obviously one means of facilitating the use of such information and communication.

An issue before this Court is whether rapid, massive machine photocopying is the equivalent of the former laborious hand copying with its own limitations as to time, effort and expense.

Another issue is the applicability of fair use to the wide dissemination of material, as opposed to hand copying for the single use of the person involved.

A still further issue is whether the dissemination of information by centers created for collection and storing of published material, as a vehicle for rapid, massive photocopying and distribution of such materials, constitutes fair use.

In connection with the above, this amicus suggests that if the National Library of Medicine had obtained a printing press in order to comply with the requests for copies, there would have been no question but that the multiple copying and dissemination of copyrighted materials would have constituted a violation of the copyright. A further issue is whether the use of a photocopy machine instead of a printing press makes a difference in the application of fair use.

In sum, this Association respectfully submits that the possible use of the lower Court's opinion as a dangerous precedent of broad scope presents an issue of great importance not only to the information industry, but to our society as well dependent as it is on the continued viability of the open and competitive marketplace of ideas, and should therefore be reviewed by the Court.

Accordingly, we respectfully urge that the petition for certiorari be granted.

Respectfully submitted,

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